

Item: 16

General Meeting of the Council: 5 May 2021.

Byelaws Regulating Consumption of Alcohol in Public Places.

Report by Chief Executive.

1. Purpose of Report

To review the current Byelaws of the Council prohibiting the consumption of alcohol in designated public places in Kirkwall.

2. Recommendations

The Council is invited to note:

2.1.

That, on 14 January 2021, the Council resolved that the Chief Executive should commence a consultation process in order to seek the views of the undernoted organisations to determine whether the existing byelaws prohibiting the consumption of alcohol in designated public places in Kirkwall should be amended, revoked or continued in their present form:

- Police Scotland.
- The Crown Office and Procurator Fiscal Service.
- Kirkwall and St Ola Community Council.
- Other relevant groups such as the Orkney Local Licensing Forum.

2.2.

That the first stage of consultation has been carried out in relation to the statutory 10-year review of the Prohibition of Consumption of Alcohol in Designated Public Places (Kirkwall) Byelaws 2011, with responses indicating that the terms of the existing Byelaws continue to be relevant and appropriate.

2.3.

That Police Scotland have indicated that it may be useful to have similar Byelaws covering other localities in Orkney.

2.4.

That there may be merit in expanding the area to which the Byelaws apply, to correspond with the expansion of housing provision on the outskirts of Kirkwall in accordance with the Local Development Plan.

2.5.

That the Scottish Government has been consulted on the Byelaws, including potential amendments to the map describing the designated area to which the Byelaws would apply, and that a response is awaited.

It is recommended:

2.6.

That the existing terms of the Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall) 2011 should remain unchanged, apart from the potential addition of a written description to accompany the map.

2.7.

That the map, attached as Appendix 2 to this report, be adopted as the new map to accompany the byelaws.

2.8.

That, subject to obtaining a satisfactory response from the Scottish Government, the Byelaws Regulating the Consumption of Alcohol in Public Places (Kirkwall) be submitted to full public consultation in accordance with section 202 of the Local Government (Scotland) Act 1973.

2.9.

That the Chief Executive should submit a report, to the General Meeting of the Council to be held on 5 October 2021 or as soon as possible thereafter, detailing the outcome of the full public consultation.

3. Introduction

3.1.

At the Special General Meeting held on 14 January 2021, the Council noted:

- That, following confirmation by the Scottish Ministers, the Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall) 2011 came into operation on 11 March 2011.
- That, in terms of Section 202A of the Local Government (Scotland) Act 1973, the Council shall, not later than 10 years from the coming into force of the current Byelaws, review the said Byelaws and do so thereafter at intervals of not more than 10 years.
- That the existing Byelaws would remain effective until amended or revoked following the conclusion of the review.

3.2.

The Council resolved:

- That the Chief Executive should commence a consultation process in order to seek the views of the undernoted organisations to determine whether the existing byelaws prohibiting the consumption of alcohol in designated public places in Kirkwall should be amended, revoked or continue in their present form:
 - Police Scotland.
 - The Crown Office and Procurator Fiscal Service.
 - Kirkwall and St Ola Community Council.
 - Other relevant groups such as the Orkney Local Licensing Forum.
- That the Chief Executive should submit a report, to the General Meeting of the Council to be held on 5 May 2021, on the outcome of the first stage of the consultation process, including any recommended amendments to the existing byelaws, prior to full public consultation on any proposals.

4. Consultation

4.1.

Copies of the Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall) 2011 (the Byelaws), attached as Appendix 1 to this report, together with a copy of Scottish Government Circular LJ/02/2014 on the subject, were sent to the following consultees and comments invited:

- The Chief Inspector at Kirkwall Police Station.
- The Procurator Fiscal at Kirkwall Sheriff Court.
- Kirkwall and St Ola Community Council.
- Members of the Orkney Local Licensing Forum.
- Kirkwall BID.

4.2.

The Chief Inspector at Kirkwall Police Station stated that most of his staff had been spoken to and provided with an opportunity to comment. In summary, all staff are happy with the current arrangements which they feel offer suitable flexibility for officers to address any offending and the discretion to take action where appropriate. The only observation was that whilst the Byelaw only covers Kirkwall, it would be “handy” to have something that was either Orkney wide or introduce other specific ones for Stromness / Dounby / Finstown / St Margaret’s Hope, etc.

4.3.

The Procurator Fiscal provided the following response:

“While not in line with others in other local authorities I am not aware of their (*sic*) being a need to fall in line with them. The Police have exercised their powers I believe appropriately and I am unaware of any occasions when a complete bar on any consumption of alcohol in a public place has appeared necessary.

Excessive alcohol consumption by some remains problematic for our community however for the most part incidents in which I become involved arise after it is consumed in licensed premises or in the house.

I do not think that it would be necessary to build in any exemptions. As it stands police can take action when it is appropriate and necessary to do so. To build in an exemption would leave them unable to do so on any such dates when they recognised that a situation was arising and prior to an offence which may involve injury or distress to others being committed.”

4.4.

No response was received from Kirkwall and St Ola Community Council.

4.5.

One response was received from a member of the Orkney Local Licensing Forum, representing the Orkney Street Pastors. The response stated that the current level of offence seemed appropriate to the situation in Kirkwall. The question was also asked whether, although the estates being developed on Carness Road and the Old Finstown Road are currently outside the main 30mph zone, the roads within the estates will be under 30mph restrictions and therefore will they be part of the designated area in terms of the Byelaws.

4.6.

No response was received from Kirkwall BID.

4.7.

The Development Management Service was also consulted, with a view to producing a new map to accompany the Byelaws.

5. Matters Arising from Consultation

5.1.

The Chief Inspector noted that it would be “handy” to have byelaws that were Orkney-wide, or to introduce other specific ones for certain towns and villages. The Scottish Government guidance contained in Circular LA/02/2014 states that byelaws covering wide geographic areas (e.g. entire local authority areas) are not recommended.

5.2.

It would be possible to introduce further byelaws covering localised areas such as Stromness, Dounby, Finstown and St Margaret's Hope. In line with the Scottish Government guidance it would be advisable to introduce these separately, rather than as an amendment to the Byelaws relating to Kirkwall. The guidance states that "While it is not Scottish Government policy to pursue a blanket ban on drinking in public e.g. across all of the local authority area, Scottish Ministers would be prepared to consider byelaws that cover population centres or other specified geographical areas especially where there has been a history of alcohol-related disorder. The areas should be clearly definable both in the byelaw and on the ground, to avoid doubt and confusion."

5.3.

Prior to the introduction of the existing Byelaws, a working group consisting of Elected Members, police representatives and other interested stakeholders was formed to consider the introduction of byelaws. Should Elected Members wish to consider introducing byelaws in other localised areas in Orkney, it may be prudent to follow the same process by forming a working group to consider the matter in the first instance.

5.4.

The Procurator Fiscal notes that the Byelaws are "not in line with others in other local authorities". This is a reference to the fact that local authorities can choose from four offences in the model byelaws issued by the Scottish Government. The majority of byelaws currently in place across Scotland are based on Offence 1, which makes it an offence to consume alcohol in a designated place. By comparison, the byelaws relating to Kirkwall use the wording of Offence 4, which makes it an offence to consume alcohol in a designated place only when failing to desist on being required to do so by a police constable. No consultees suggested any change to the current wording.

5.5.

The Procurator Fiscal also alludes to the fact that exemptions can be built into byelaws. Exemptions can be provided to cover local celebrations, festivals, etc. There is no need to apply for an exemption to cover New Year celebrations, because the model byelaw has the exemption built in. As the Byelaws only make it an offence to consume alcohol in a designated public place when failing to desist on being asked to do so, this provides the Police with flexibility to choose not to apply the byelaws and to an extent negates the need to have specific exemptions.

5.6.

The response from Orkney Street Pastors raises the question of the expansion of Kirkwall's residential areas. The existing Byelaws cover the 30mph zone around Kirkwall, together with Hatston Pier. The Council's Roads Services team have confirmed that there has been no change to the 30mph zone since the Byelaws were first introduced. There may be future extensions of the 30mph zone to cover housing developments on Carness Road and the Old Finstown Road, but there is no known timescale for these possible changes.

5.7.

Views were also sought on this matter from the Development Management Service. One way of helping to address the question of town expansion would be to make the "designated area" covered by the Byelaws correspond with the Kirkwall settlement boundary contained in the current Local Development Plan. A copy of this plan is attached as Appendix 2, and it is proposed that this plan be adopted as the new plan for the Byelaws.

5.8.

The existing Byelaws contain only a plan showing an area outlined in red. However, the Scottish Government guidance states that it is the responsibility of the local authority to ensure that the area covered by the byelaws is described with sufficient certainty so that a court would have no difficulty in any given case in determining what that area was. It is proposed that the updated map be accompanied by a written description of the boundaries of the perimeter, should the Scottish Government recommend this after reviewing the draft plan. This description will be prepared by Legal Services, working in conjunction with Development Management and Roads Services as appropriate.

6. Subsequent Procedure

6.1.

A copy of the Byelaws, together with a copy of the plan attached as Appendix 2, was submitted to the Scottish Government for comment on 24 March 2021. The next step is that the Scottish Government will write back to the Council acknowledging the proposed byelaws, and informing the Council that the Scottish Ministers will decide whether or not to confirm the proposed byelaws at the confirmation stage of the byelaw application process. To date, no response has been received.

6.2.

Following receipt of a satisfactory response from the Scottish Government, the Council will require to follow the procedures set out in section 202 of the Local Government (Scotland) Act 1973 and advertise the proposed byelaws. The Council must advertise its intention to apply for confirmation of the proposed byelaws in a local paper, and make the proposed byelaws and plans available for public inspection for at least one month. The advertisement must explain that objections are to be addressed to The Scottish Ministers at the address provided.

6.3.

If an objection is submitted, the objector will be informed by the Scottish Government that their objection is being considered. The Council will be asked by the Scottish Government for any comments on the objection. The objection, along with the Council's comments, will be considered by the Scottish Government as part of the overall consideration given as to whether to confirm the byelaw.

6.4.

A report will be presented to a General Meeting of the Council following the public consultation process. After a period of at least one month from the date of expiry of the public consultation period, the Council shall make the proposed byelaws and submit the principal copy, duly authenticated, for confirmation by the Scottish Ministers.

7. Corporate Governance

This report relates to the Council complying with governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

8. Financial Implications

There are no significant financial implications arising directly from the recommendations of this report.

9. Legal Aspects

9.1.

Under section 201(1) of the Local Government (Scotland) Act 1973, a local authority may make byelaws for the good rule and government of the whole or part of their area, and for the prevention and suppression of nuisances therein.

9.2.

Sections 128 and 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 give the police powers to issue a fixed penalty notice for drinking alcohol in contravention of byelaws made under sections 201-203 of the 1973 Act. If an offender refuses to pay the fixed penalty notice, or wishes to challenge the allegation in court and is found guilty, the offender is liable on summary conviction to a fine not exceeding level 2 (£500) on the standard scale.

10. Contact Officers

John W Mundell OBE, Interim Chief Executive, extension 2101, Email chief.executive@orkney.gov.uk.

Gavin Mitchell, Head of Legal Services, extension 2233, Email gavin.mitchell@orkney.gov.uk.

Sheila Tulloch, Solicitor, extension 2213, Email sheila.tulloch@orkney.gov.uk.

11. Appendices

Appendix 1: The Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall).

Appendix 2: Proposed new map to accompany byelaws.

**THE ORKNEY ISLANDS COUNCIL
PROHIBITION OF CONSUMPTION OF ALCOHOL IN
DESIGNATED PUBLIC PLACES BYELAWS (KIRKWALL) 2011**

Orkney Islands Council ("**the Council**") in exercise of the powers conferred upon it by sections 201, 202 and 203 of the Local Government (Scotland) Act 1973, section 46 of the Orkney County Council Act 1974 and of all the other powers enabling it in that behalf, hereby makes the following byelaws:-

Interpretation and Citation

1. (1) In these byelaws, unless the context otherwise requires –

"alcohol", has the same meaning as in section 2 of the Licensing (Scotland) Act 2005;

"licensed premises" has the same meaning as in section 147(1) of the Licensing (Scotland) Act 2005 but does not include premises in respect of which there is a provisional premises license (within the meaning of section 45(5) of that Act);

"occasional license" has the same meaning as in section 56(1) of the Licensing (Scotland) Act 2005;

"designated place" means any place to which the public have access within the areas specified in Schedule 1 to these byelaws and shown outlined in red on the plans annexed and signed as relative hereto;

- (2) These byelaws may be cited as "The Orkney Islands Council Prohibition of Consumption of Alcohol in Designated Public Places Byelaws (Kirkwall) 2011".

Offence

2. (1) Subject to paragraphs (2) and (3) below, any person who consumes alcoholic liquor in a designated place and fails to desist on being required to do so by a Police Constable, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) It shall not be an offence against these byelaws to do anything in any designated place which comes within the meaning of licensed premises.
- (3) It shall not be an offence against these byelaws to do anything in any designated place in respect of which an occasional licence is in operation during any period when alcohol may be sold there by virtue of that licence and for 15 minutes after the expiry of such a period.

Presumptions

- 3. (1) This byelaw applies for the purposes of any trial for an offence against these byelaws.
- (2) Any liquid found in a container shall, subject to the provisions of this byelaw, be presumed to conform to the description of the liquid on the container.
- (3) A container which is found to contain –
 - (a) no liquid; or
 - (b) insufficient liquid to permit analysis

shall, subject to the provisions of this byelaw, be presumed to have contained at the time of the alleged offence liquid which conformed to the description of the liquid on the container.

- (4) A person shall not be entitled to lead evidence for the purpose of rebutting a presumption mentioned in paragraphs (2) or (3) above unless, not less than 7 days before the date of the trial, he has given notice to the prosecutor of his intention to do so.

Public Notice of Effect

- 4. (1) The Council shall erect one or more signs at or reasonably adjacent to each designated place for the purpose of giving notice of the effect of these byelaws.
- (2) It shall be no defence in proceedings against a person for an offence under these byelaws that the Council failed to comply with paragraph (1) of this byelaw.

.....

Albert V. Tait
Chief Executive
Orkney Islands Council

24 January 2011

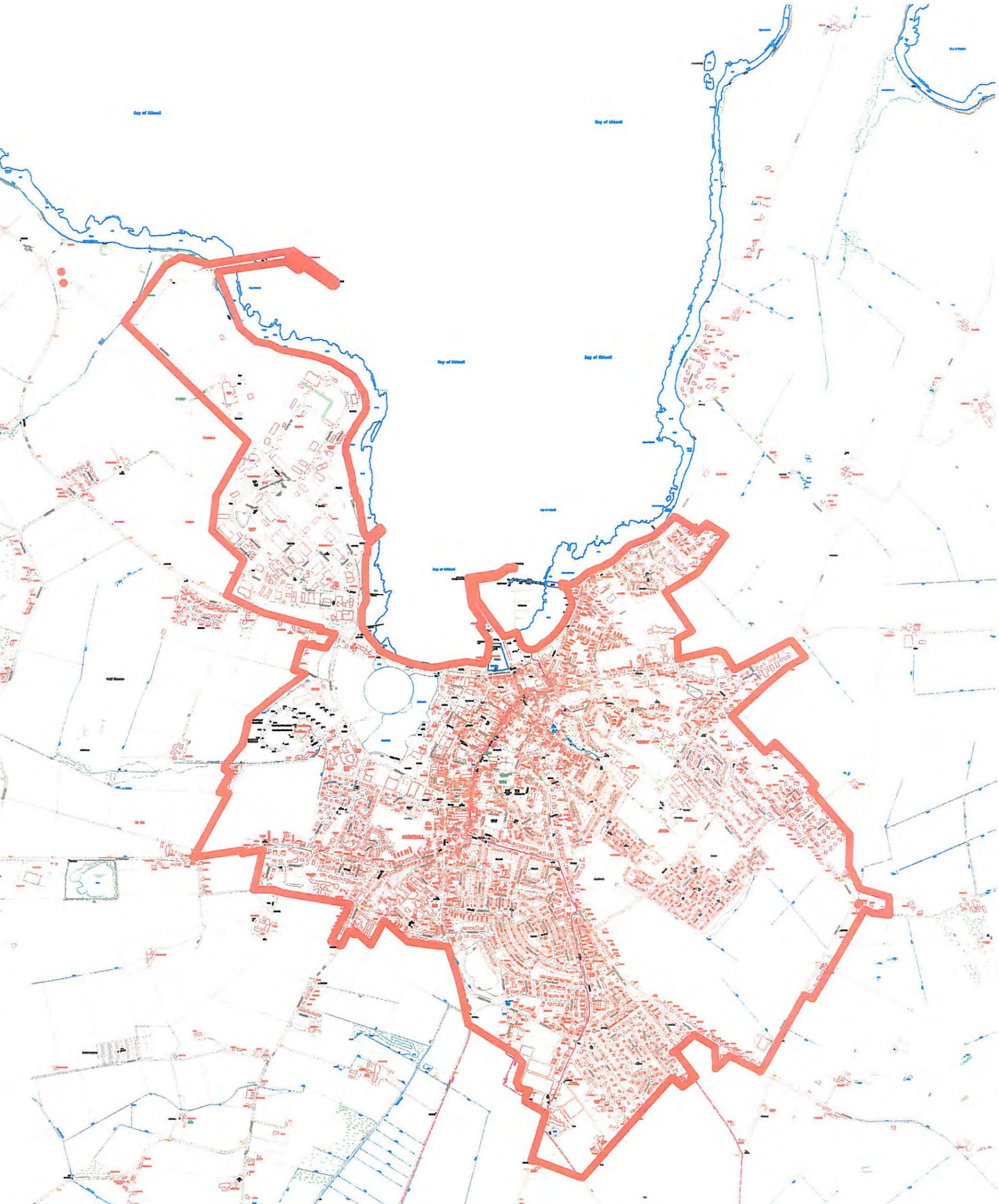
**This is the Schedule to the Orkney Islands Council Prohibition of Consumption
of Alcohol in Public Places Byelaws (Kirkwall) 2011**

The 30mph zone in and around Kirkwall together with Hatston Pier and the surrounding area, all as shown outlined in red on the attached plan.

.....

Albert V. Tait
Chief Executive
Orkney Islands Council

24 January 2011



File Ref. R2.10.20 - Prohib A-01	Drawing No. Prohib A-01
Revision 2	Drawn D.W.
Date 18th Oct 2007	Checked ?
Scale 1:15000	

**AREA COVERED BY
BYELAWS ON THE
PROHIBITION OF
CONSUMPTION OF
ALCOHOL**

**Roads
Services**

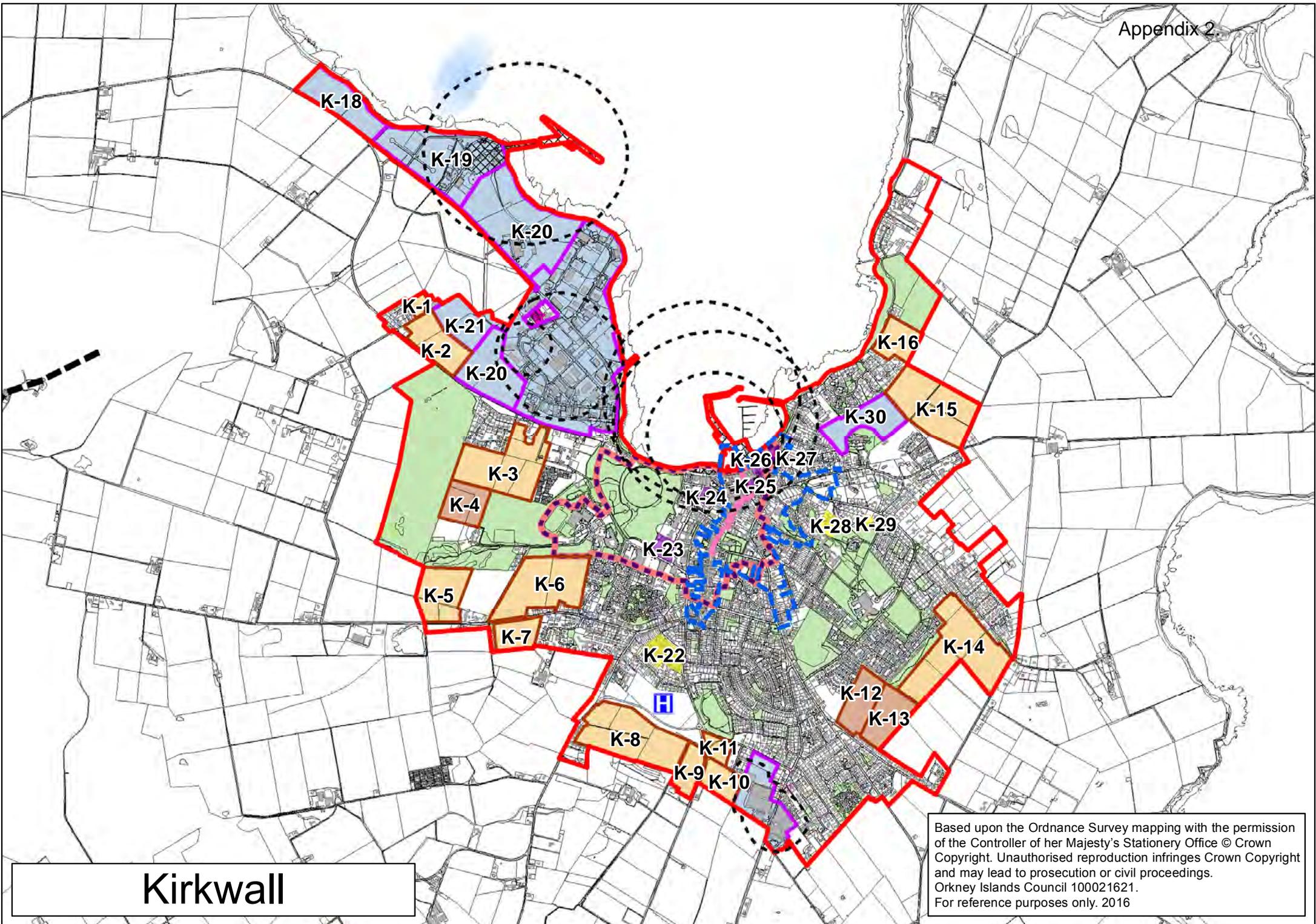
DEPARTMENT OF TECHNICAL SERVICES
Council Offices, Kirkwall
Orkney, KW15 1NY
tel (01856) 873535
fax (01856) 876094



Director :-
Brian Thomson
BSc CEng MICE MIHT

ORKNEY
ISLANDS COUNCIL

G:\rec\roads division\roads support\autocad\TKO's\master drawings\kirkwall\oct 2007.dwg



Kirkwall

Based upon the Ordnance Survey mapping with the permission of the Controller of her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Orkney Islands Council 100021621. For reference purposes only. 2016